CONSTITUTION AND ADMISSION OF IOWA INTO THE UNION

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History is past Politics and Politics are present History.—*Freeman*

CONSTITUTION AND ADMISSION OF IOWA INTO THE UNION

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CONSTITUTION AND ADMISSION OF IOWA INTO THE UNION

I.—Introduction.[1]

Since the States of the Middle West have become so prominent in the decisions on national issues, it is interesting to contemplate their coming into the political arena. By such a study we may comprehend more fully the significance of fifty years of our nation's growth and the development of new principles. Especially is the study of the evolution of Statehood opportune while we are permitted to supplement the written records, at times misleading, by the testimony of those who were actively engaged in the contest for admission.

It is hoped that this study may contribute somewhat to the more orderly presentation of material, some of which is difficult of access, and thus aid the future historian at once to correct some of the statements made by past writers, and give a more complete account of the problems surrounding the coming of Iowa into the Union.

Iowa was the subject for a great amount of legislation

[1] For many of the facts of this study, I am indebted to the Hon. T. S. Parvin, LL. D., one of the district attorneys of the Iowa Territory. He has also been a careful observer of the development of the State since it was admitted into the Union.

I am also under obligation to the librarians and other officials of the Masonic Library of Cedar Rapids, of the State Historical Society of Iowa City, and of the State Historical Society of Des Moines for their kindly assistance.

The collecting of material was begun while I occupied the chair of History in Cornell College. Partial results were set forth in a volume of the American Historical Association, 1897, pp. 161-173, on National Politics and the Admission of Iowa into the Union.

before the time of its application to become a State. As a part of the vast territory west of the Mississippi river, it was claimed in turn by England and France, was ceded to Spain and again to France and was finally purchased in 1803 by the United States. By an act of March 26, 1804, the Louisiana purchase was divided into two territories. One of these, the territory of Orleans, was given a definite territorial government. The other, the district of Louisiana, was allowed to remain practically without organization in itself, but was placed under the jurisdiction of the territory of Indiana. The people of the district were dissatisfied with such a settlement and their representatives, assembled at St. Louis, sent a vigorous remonstrance to Congress against the "dictates of a foreign government," the "violation of the principles of liberty and equality" and other supposed abuses. Their petition for the establishment of a separate territory was effective, and in March, 1805, the Territory of Louisiana was created.

In 1812, this territory was recognized as the territory of Missouri. When Missouri became a State in 1821, there was no provision made for the government of the territory to the north, which embraced the future commonwealth of Iowa. This condition seems to have obtained until 1834, when it was included in the territory of Michigan. The act declared that it was for the purpose of temporary government, and that the inhabitants therein shall be entitled to the same privileges and immunities and be subject to the same laws, rules and regulations in all respects as the other citizens in Michigan Territory.[2] When the territory

[2] In spite of this decree, there seems to have been little heed paid to the securing of an orderly form of government in that portion of the territory west of the Mississippi river. In the discussion of the question as to the advisability of forming a separate territorial government for Wisconsin, March 28, 1836, this lack of government was set forth. The judge appointed under the act of 1823, which provided an additional judge for Michigan territory, having jurisdiction within the counties of Michilmackinac, Brown and Crawford, declared that he had no authority outside these three

of Wisconsin was established by an act of July 4, 1836, Iowa was included and remained under the jurisdiction of that territory until it was organized as a separate territory, June 12, 1838.[3]

II.—Government Before the Territory of Iowa was Established

The lack of organized government for Iowa before the year 1830 was of little moment, for it was not until that year that the first white settlement was made. During this year a company of miners crossed the river from Illinois, and settled at Dubuque for the purpose of working the lead mines. They quickly agreed to a compact, which was to constitute a government suitable to themselves. But the land of which they took possession was still owned by the Sac and Fox Indians, and troops were sent by the United States Government to protect the Indian rights. By 1834, the Indian title had been extinguished and some two thousand persons were living in Dubuque, still under their self-constituted government, the United States having made no provision for the settlement of the territory. Settlements were also made at Burlington, Keokuk and several other places. Unlike the mining camp at Dubuque, these settlers had come, bringing their families with them, for the purpose of founding homes. Settlers first went to Burlington in 1832, and they organized their first local government in 1833. The land of which they had taken

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counties. In the case of a murder committed in the county of Dubuque, "the murderers were discharged, after argument before the judge, for want of power to punish them. The Committee on Judiciary had recently received intelligence that, for want of law to punish these murderers, one of them had been, a few weeks since, deliberately shot down in the public streets of the town of Dubuque." Congressional Debates, Vol. XII, part I, p. 978.

[3] Reprinted from the United States Statutes at Large, Vol. V, p. 235. Quoted in Shambaugh, Documentary Material Relating to the History of Iowa, No. 5, pp. 102-116.

possession had not been surveyed. How, then, were they to hold it? The improvements made for their actions were clearly contrary to a decree of Congress.[4] Regardless of this fact, settlements multiplied, each with its local organization, usually known as "Claim Association."

The principal features of these organizations were practically the same.[5] (1) There was a provision as to the amount of land in a claim. In some cases this was four hundred and eighty acres; in others it was one hundred and sixty acres. There was sometimes a provision as to what part should be prairie and what part timber. (2) There was a provision as to the amount of improvement required to hold the claim in cases where the claim was not occupied. (3) There was a provision as to occupancy. Desertion for a specified time or a failure to make the required improvements worked forfeiture. (4) Claims could be sold to any person approved by the organization, and the buyer had all the privileges and obligations of the original claimant. A deed was given and recorded. (5) Provisions were made for settling disputes between claimants. As the government surveys had not been made, each claimant could have his amount of land, but he could not tell where his lines would be. Valuable improvements were made before the surveys; this naturally gave rise to difficulties and disputes. Provisions for settling these were of different sorts. The members of the organization bound themselves to abide by the decisions of courts established by the association; or difficulties were settled in mass meeting; or especial arbiters were chosen to settle special cases; or a neighboring organization was invited to assist in settling a difficulty. In one or another of these ways nearly all cases were adjusted in an orderly way. (6) There were provisions for

[4] By act of 1807, trespassers upon United States territory were subject to removal, fine and imprisonment.

[5] For the constitution of an association, see Macy, Institutional Beginnings in a Western State; Johns Hopkins University Studies in Historical and Political Science, Vol. II, pp. 33-38.

securing the enforcement of all decisions and for protecting their claims against outside parties."[6] When the land was placed on the market by Congressional authority the decrees of the associations were completely enforced. No difficulty was experienced on the part of the original claimants in securing, through their special delegates, at a nominal rate, the lands which they had taken.[7]

In addition to this type of local government, the territory of Michigan created out of the area west of the Mississippi river, the counties of Dubuque and Des Moines, each of which was to constitute a township. Wisconsin, too, provided for the creation of sixteen counties within the same area, each having a carefully organized system of townships. These legislative units were of little force against the earlier organizations even during the first years after a separate territorial government was formed.

While these pioneers were content with their own local government, they appreciated the need of a government which would be adequate for the administration of more general affairs. So in 1837, the question of organizing a territorial government was taken up for the first time by a convention which met in Burlington. They adopted a memorial to Congress in which they set forth their needs as follows: "From June, 1833, until June, 1834, a period of one year, there was not even a shadow of government or law in all western Wisconsin. In June, 1834, Congress attached her to the then existing Territory of Michigan, of

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[6] Macy, Institutional Beginnings in a Western State; Johns Hopkins University Studies in Historical and Political Science, Vol. II, pp. 11, 12.

[7] This occupation of land which had been recorded by the Association was declared to be legal by the territorial legislature. But this decision was clearly contrary to the intent of the act of 1807. It was sanctioned, however, by a decision of the Supreme Court of the territory in a test case during the year 1840. Iowa, by this virtual annulment of a United States statute, showed that independence characteristic of the commonwealth in the later contest by which it became a State.

which Territory she nominally continued a part until 1836, a period of little more than two years. During the whole of this time, the whole country west, sufficient of itself for a respectable State, was included in the two counties of Dubuque and Des Moines. In each of these two counties there were holden, during the said term of two years, two terms of a county court (a court of inferior jurisdiction), as the only source of judicial relief up to the passage of the act of Congress creating the Territory of Wisconsin. That act took effect the third day of July, 1836, and the first judicial relief under that act was at the April term following, 1837, a period of nine months after its passage; subsequent to which time there has been a court holden in one solitary county in western Wisconsin only. This, your memorialists are aware, has been recently owing to the unfortunate indisposition of the esteemed and meritorious Judge of our district; but they are equally aware of the fact that had western Wisconsin existed under a separate organization, we should have found relief in the services of other members of the judiciary, who are at present, in conseqence of the great extent of our Territory, and the small number of judges dispersed at too great a distance and too constantly engaged in the discharge of the duties of their own districts, to be enabled to afford relief to other portions of the Territory. Thus, with a population of not less than twenty-five thousand now, and of near half that number at the organization of the Territory (of Wisconsin), it will appear that we have existed as a portion of an organized Territory for sixteen months with but one term of court only."[8] Evidently the desired effect was produced, for Congress, by an act of June 12, 1838, constituted the "Organic Law," which was virtually a Constitution for the Territory of Iowa.[9]

[8] Quoted in Macy, Institutional Beginnings in a Western State; Johns Hopkins University Studies in Historical and Political Science, Vol. II, pp. 9, 10.

[9] The organic act is given in Shambaugh, Documentary Material

III.—Events Leading to the Constitutional Convention of 1844

That ambitious characteristic of American pioneers quickly asserted itself. Some of her prominent men spoke of an early admission into the Union. Her governor in 1839[10] recommended to the Legislative Assembly that a memorial to Congress be prepared asking that body to pass an enabling act at their next session. His reasons for taking this step were warranted, he thought, in consideration of the rapidly increasing population and advancing prosperity of the territory and because of the inherent weakness of the government at that time. He cited the example of Ohio, Indiana and Illinois, whose prosperity was much enhanced after they became States. The question was then agitated in the Legislative Assembly. A minority report of the committee on territorial affairs seconded the recommendation of the governor, but the report of the majority was adopted.[11] This majority resolution set forth the inexpediency of such a move at that time; holding that a State government would increase the burden of taxation and that the people needed all the means at their command for the making of homes. It was further asserted that Iowa, when made a territory, was given "ample liberty and freedom in local self-government," a privilege not granted to territories previous to that time.[12]

A message of Governor Lucas of July 14, 1840,[13] again

Relating to the History of Iowa, No. 5, pp. 102-116. Reprinted from the United States Statutes at Large, Vol. V, p. 135.

"This act must be viewed by us as the Constitutional Charter of the Territory; it prescribes our powers, defines our duties, directs our actions, and points out our rights and privileges." From the Message of Governor Lucas, Nov. 12, 1838.

[10] Message of Governor Lucas, November 5, 1839.

[11] The vote stood 21 to 4.

[12] Iowa City Standard, Feb. 19, 1842. From a letter of Francis Springer, a member of the Council.

[13] Journal of House of Representatives, Extra Session, 1840.

suggested that the Legislative Assembly should provide for the taking of the sense of the people, at the next annual election, relative to a constitutional convention. In accord with his wishes, an act was passed, July 31, 1840, calling for a vote of the people on this question. In August of that year, the proposition for a *convention* was defeated by a large majority.[14]

But the question was by no means settled. In his message of the following year, Governor Chambers[15] also spoke of the legislation which would be necessary to again secure the dictum of the people, on the question of a convention, as being of paramount importance. He doubted not but that the rapid increase of the population[16] and the recent legislation of Congress on the disposition of the proceeds of the sales of the public lands would have much to do in changing public sentiment. Again, an act of the Legislative Assembly called for a vote of the people in August of the following year. This result was largely produced through the vigorous use of the party whip. In general, the Whigs, then holding the offices by appointment from Washington, were opposed. The Democrats, with a probable majority in the Territory, hoped to obtain the spoils when Iowa should become a State. Various arguments in favor of the convention were set forth by the Democratic press. It was held that the population of the State would be rapidly increased. They believed large numbers would come into the State from Illinois and Indiana, hoping thus to escape the embarrassed financial condition of those states.[17] The one thing which the people of Iowa feared

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[14] Vote for a convention, 937; against, 2907. Iowa City Standard, Vol. I, Nov. 27, 1840.

[15] Message of Dec. 8, 1841.

[16] By the census of June 1, 1840, there were 43,000 inhabitants, an increase of over 21,000 in two years. Iowa Capitol Reporter, Jan. 1, 1842.

[17] As a safeguard against such a condition ever obtaining in Iowa, it was urged that the Constitution ought to be so framed as to prevent the creation of a state debt in any form.

and largely determined the vote against the convention, was just this of financial burdens. The privilege of electing their own officers instead of receiving those sent them was urged; also the greater influence which the State would have in the councils of the nation. That the taxes would be slightly augmented was admitted. As an offset, it was asserted that they would obtain, through their greater influence, much larger appropriations for internal improvements, then "few and far between, but trifling in importance compared with those which are annually lavished upon the Atlantic frontier or even upon the lake coast."[18] The then prevalent Western sentiment against Eastern dominance is deftly used, and it was urged that the Senators and Representatives from Iowa might be the means of greatly aiding in preventing "Western interests from being longer neglected." An appeal was made to parents on behalf of the education of their children, for no aid could be gotten from the lands reserved for school purposes while Iowa remained a territory. Finally, they insist that if they do not now apply for admission it will be delayed for some time, for Wisconsin will be admitted along with Florida and there will remain no slave state which may be paired with Iowa. The stock arguments brought forward against a convention were that there would certainly be a great increase of taxation in order to maintain a state government, and that it was merely a scheme of Democratic office-seekers. The necessity of paying for their own administration of government, by the levying of taxes, again frightened the people and they decided against the convention.[19]

Another message of Governor Chambers[20] looking to the same end was laid on the table by the Territorial House of Representatives. Finally, however, an act of the legislature passed February 12, 1844, providing for a constitu-

[18] Iowa Capitol Reporter, June 18, 1842.

[19] Vote for a convention, 4129; against, 6825. Iowa City Standard, Vol. II, Sept. 10, 1842.

[20] Message, Dec. 4, 1843. Journal House of Representatives, p. 10.

tional convention, was sanctioned by a majority of the qualified voters in the April election.[21] The arguments for and against the convention were practically the same as those already given. The Whig press gave its version as follows: "There is in this Territory a set of speculating politicians, mere soldiers of fortune, whose whole souls are wrapped in the endeavor to rush the Territory into a State organization in the belief that their precious selves will get elected to the offices that will be created. The people have already repudiated them and their offers on two occasions, and if true to themselves, they will do it a third time. It is no light matter to propose to the people of this Territory, poor as they are, and even now almost without a circulating medium, that they shall give up the yearly receipt of some sixty thousand dollars in hard cash and tax themselves some forty thousand dollars for the support of a State government. The difference that it would make with each land-holding elector, and upon that class the principal burden of this change would fall, could not be less than ten dollars per annum upon an average, and it is not unlikely it would be even more."[22] There was a striking democratic tone in the meetings which were held to select delegates to the convention. Resolutions were prepared in many of them. One of these statements declared that they looked upon the common phraseology used in petitioning legislative bodies, such as "we humbly ask your honorable bodies"; "we will as in duty bound ever pray," as relics of monarchy and wholly incompatible with the rights of freemen and the spirit of our noble institutions and ought to be dispensed with in future. A lack of confidence in the men of the so-called professions on the part of the farmers is notably present. "We wish," so an address to the people asserted,[23] "every class of our citizens fairly and fully represented by

[21] Majority in favor of State government, 2913. Hull, Historical and Comparative Census of Iowa, Introduction, p. ix.
[22] Iowa City Standard, Feb. 29, 1844.
[23] Iowa City Standard, June 6, 1844.

their peers, and however much we value and honor the various professions of our country, still we believe they cannot, from the very nature of things by any possibility, enter into the feelings and understand the wants of a working community and not being their peers, cannot fairly represent them; and, aside from this, there is such a disparity between the prices generally charged by professional men for their services and the prices we are allowed for hard labor that we have but little reason to hope for a fair, equal and economical government from their hands."[24] Party lines based on national party principles were closely drawn in the selection of delegates to the convention.[25]

The charges and counter-charges made in the conduct of the campaign were not materially different from those heard to-day.[26]

IV.—The Constitution of 1844

The convention which was to frame a constitution met at Iowa City, October 7, 1844. Of the seventy-three members constituting that body, fifty-two were Democrats. The

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[24] Forty-six of the seventy-three members in the convention were farmers.

[25] We contend that the Whig party has kept the faith handed down from the Whigs of the Revolution and the Framers of the Constitution. We contend that a constitution for the State of Iowa formed under the auspices of the Whigs would, with the greatest degree of certainty, secure to her all the advantages of good government and wholesome laws. Iowa City Standard, July 18, 1844.

[26] The defeated party declared: "We have just passed through a most important and exciting canvass in this country, where Locofocoism used every means that corruption could suggest or ingenuity devise for the purpose of re-establishing its departing ascendency. Lies were spoken and printed, money was subscribed and spent, midnight expeditions were got up, voters were imported, imbeciles were rushed to the polls, some were made drunk, some were overawed; in a word, nothing was left undone by the Locofocos to carry the country. On the other hand, the Whigs made just their usual exertion, nothing more." Iowa City Standard, Aug. 8, 1844.

members had come to Iowa from fourteen different States. A majority of the delegates were from Northern States.[27]

A heated discussion was projected at the outset upon the desirability of opening the convention each day with prayer.[28] The question was finally indefinitely postponed.

That desire of keeping constituents informed of the doings of their representatives had not taken possession of the American mind of that period. A majority of the members from the beginning were opposed to the additional expense of the convention which would ensue were members to be allowed to subscribe for even ten copies of the papers published in the city where they were in session. Notwithstanding the urgent appeal on the part of some of the members that it was poor economy to deny the people information upon a subject of such special importance and one upon which they would be called upon to express their opinions in the near future, the cry of economy prevailed.

I. WHAT WAS TO BE THE STATUS OF THE NEGRO?

Iowa, as early as the year 1840, had been given its position relative to one phase of the slavery question. At that time her Chief Justice, Charles Mason, in delivering the decision of the Court,[29] took the advanced ground that Iowa was free soil, and that when a slave, with the consent of his

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[27] Pennsylvania, 13; Virginia, 11; New York, 9; Kentucky, 8; Ohio, 8; North Carolina, 6; and the remainder from Massachusetts, Indiana, Tennessee, Maine, Illinois, New Jersey and Scotland.

[28] It was declared "It would not be economical, for the convention sat at an expense of two hundred to three hundred dollars per day, and time was money. To pass a resolution to have prayers was compelling men to listen to what they were opposed to and violated one of the inalienable rights of men." Public prayer was too ostentatious. If the convention had a right to pass such a resolution, it had the right to establish a religion. It had no right to bring members on their knees every morning. Absent members might be brought in and compelled to hear what they were opposed to. This was contrary to the inalienable rights of man. Iowa City Standard, Oct. 10, 1844.

[29] The Territorial Supreme Court consisted of three justices.

owner, entered this territory, from that moment he was free.[30]

Like the rest of the Northern States, there was the desire to prohibit slavery by means of a constitutional provision. But the framers of this constitution were opposed to the giving of free negroes those civil, social, and educational privileges enjoyed by white men. The report of a special committee, upon a petition from a considerable body of citizens, sets forth the prevailing sentiment of the period. This report admitted the truth of the expression, that "all men are created equal," as an abstract proposition, but holds that it becomes modified when man is considered as a part of an artificial state in which government places him. It asserts that the philanthropist should commisserate the fate also of women and children who, in like manner, are deprived of certain rights. Then follows what was considered conclusive reasoning on the proposition that that government is not unjust which deprives the "citizen of color" of some privileges. It was held that the whole subject should be treated as a question of policy or contract where self-interest is just as properly consulted as in the promotion of a commercial treaty or a private contract. "'Tis the *white* population," the report continues, "who are about to form a government for themselves, no negro is represented in this convention and no one proposes to become a member of the compact. 'Tis the white population of this territory who petition for the admission of the negro. They necessarily believe that the introduction of

[30] Morris, Iowa Reports, 1848. The report is as follows: "In the matter of Ralph, a colored man, on habeas corpus. Where A., formerly a slave, goes, with the consent of his master, to become a permanent resident of a Free State, he cannot be regarded as a fugitive slave. The act of 1820, for the admission of Missouri into the Union, which prohibits slavery north of 36° 30′, was not intended merely as a naked declaration, requiring legislative action in the states to carry it into effect, but must be regarded as an entire and final prohibition. The master, who subsequently to this act, permits his slave to become a resident here, cannot afterwards exercise any acts of ownership over him within this territory."

such a population as citizens would not interfere with the enjoyments of the white citizens. . . . The negro, not being a party to the government, has no right to partake of its privileges." They feared, a common argument of the time,[21] if concessions were made that the black population of other states would enter Iowa. That there was little basis for such an argument[22] was of small moment, but it was convincing. Then follows an enumeration of abuses which it was thought would be introduced; the ballot-box would fall into the hands of the negroes and a train of evils ensue beyond calculation; there would be less security to persons and private property; discord and violence would ensue if the two races were put on equal terms; and, finally, government itself would become anarchical or despotic. This report was laid on the table, and notwithstanding the various petitions received, there was no attempt to revive the question either in this convention or that of 1846.

2. THE ESTABLISHMENT OF BANKS AND OF SCHOOLS

The refusal of President Jackson to sign the bill which allowed the re-charter of the United States Bank had its

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[21] Thorpe, Constitutional History of the American People, Vol. II, pp. 250, 251.

[22] "Since 1792, suffrage in New Hampshire had been unrestricted. Connecticut, less liberal, had restricted the right to vote to white persons. In 1800, the free colored population of New Hampshire was eight hundred and eighteen; ten years later it had increased to nine hundred and seventy, or nineteen per cent. In 1800, the free colored population of Connecticut was five thousand three hundred and thirty, which ten years later had increased twenty-one per cent. . . . In 1830, the free colored population of New Hampshire was six hundred and four, or thirty-three per cent less than ten years previously; while in Connecticut at this time it had increased three per cent. In 1840, the free colored population of New Hampshire showed a loss of over ten per cent; while in Connecticut it had increased, though only one per cent. Thus during a period of forty years the free colored population of New Hampshire fell from eight hundred and eighteen to five hundred and thirty-seven, a loss of thirty-three per cent; while in Connecticut it increased from five thousand three hundred and thirty to eight thousand one hundred and five, or about fifty per cent." Thorpe, Constitutional History of the American People, Vol. II, pp. 251, 252.

effect as far west as the, then, really unknown district of Iowa. Almost two years before Iowa was given a territorial government, the Wisconsin Legislature granted a charter for the formation of a corporation bearing the name of the Miner's Bank of Dubuque.[33] This charter was to continue in force until May 1, 1857. Business might be begun when there should be forty thousand dollars in stock paid in. No bills of a less denomination than five dollars were to be issued during the first four years of its existence. At the end of this period, the Legislature might prohibit the issue of bills for a less denomination than ten dollars, and at the end of ten years, prohibit those under the denomination of twenty dollars. In common with other banks throughout the country, the Miner's Bank was greatly crippled by the issue of the Special Circular by President Jackson. It was compelled, too, March 1, 1841, to suspend specie payments.[34] This necessity brought the Bank into general disfavor and a bill introduced into the fifth Legislative Assembly provided for the repeal of its charter. Failing of a majority for the time, the contest on the same measure was aroused in the two succeeding assemblies. Finally, May 14, 1845, the bill was passed.[35] The

[33] Charter granted, Nov. 30, 1836. For the facts on this subject, I am chiefly indebted to H. W. Lathrop, of Iowa City. Mr. Lathrop has given the account in the Iowa Historical Record for April, 1897, pp. 54-65.

[34] "During the pendency of the bill in the Fifth Legislative Assembly, a report was made by a committee to whom it was referred, containing the statement that the Territory was owing the bank $5876.25, then long overdue; and that this, with the specie on hand, was enough to redeem all its outstanding notes not in the hands of the stockholders." Iowa Historical Record, April, 1897, p. 57. This money had been used in the construction of the Capitol building at Iowa City.

[35] This whole contest with the bank seems to have been "a warfare between weakness and poverty on one side, and impecuniosity, bank prejudice and legal power on the other."

"While the Territory, represented by the Legislative Assembly, was trying to force the Bank to pay specie on its notes, so depressed was public credit, that territorial warrants were hawked about the streets at a fifty per cent discount, because there was

friends of the bank were compelled to acquiesce after a decision was rendered against them by the Supreme Court.

The Convention of 1844 partook of the spirit of opposition to banks then strong in the territory and becoming stronger throughout the Union. No question was discussed, by them, at greater length. Finally they agreed by taking a position in advance of that which had been taken in the other states. They provided that no banking institution of whatever nature should be created by the Legislature unless the charter should first be submitted to a vote of the people at a general election for State officers, and receive a majority of the votes of the qualified electors.[36] The State was not to become a stockholder in any such institution.

Feeling against the establishment of corporations was also strong.[37] The clause at last agreed upon, provided that no act of incorporation should continue in force for more than twenty years, unless it had been created for the purpose of carrying on public improvement; that the property of the individual members should be liable for the debts of the incorporation; that the legislature might repeal acts of incorporation granted by it whenever it so chose, and that the property of the inhabitants of the State should not, without the consent of the owner, be taken by any such company. Counties, towns, and other public corporations were not to be subject to these limitations.

Schools were early established in the territory of Iowa.[38] To the urgent appeals of her territorial government[39] and

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no specie or any other money on hand to pay them." Iowa Historical Record, April, 1897, p. 58.

[36] Journal of the Constitutional Convention, 1844, p. 200.

[37] "These soulless monsters have tyrannized enough; and we rejoice that Iowa in the outset has bound the hydra, hand and foot." Iowa Capitol Reporter, Vol. III, p. 43, No. 9, 1844.

[38] The first school was established in Iowa in 1830. Parvin, "Who Made Iowa," pp. 19, 20.

[39] In his first message to the territorial Legislature, Governor Lucas, the first governor of the territory, said: "The subject of providing by law for the organization of townships I consider to

the co-operation of her territorial Legislatures is largely due the foundation for the present excellent common school system. It is not surprising then that the Iowa Constitutional Conventions paid much attention to the cause of education. The Convention of 1844 set forth its views in one of the most striking clause of the Constitution. There was to be a Superintendent of Public Instruction appointed by the Legislature for a term of three years. Improvement along "intellectual, scientific, moral, and agricultural lines, was to be promoted through the expenditure of the interest derived from a perpetual fund. The sources for this fund were to be from the sale of all lands granted to the State by the United States for the support of schools; the five hundred thousand acres of public lands to be received under the act of 1841; "all estates of deceased persons without will or without heirs"; and the rents of all unsold lands within the State. It provided also that the Legislature should establish a system of common schools by which they should be maintained for at least three months during the year in each school district. There was to be established at the earliest time possible, a library in each township, which should derive support from money paid as exemption from military duty and the proceeds from fines in the several counties. The means provided for University education, through the sale or rent of lands granted by the United States Government, was to be guarded as a permanent fund for the University purposes.

After a session of twenty-five days, the Constitution was completed and was submitted to Congress by the territorial delegate.[40]

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be of the first importance and almost indispensable to the local organization of the government. Without proper township regulations it will be extremely difficult, if not impossible, to establish a regular school system. There is no subject to which I wish to call your attention more emphatically than to the subject of establishing at the commencement of our political existence a well-digested system of common schools." Quoted in Parvin, Who Made Iowa, p. 26.

[40] The boundary proposed was the following: Beginning in the

3. THE CONTEST AROUSED IN CONGRESS

A significant contest was aroused when the question of the admission of Iowa was presented before Congress. True, it was but the "old struggle for legislative supremacy" between freedom and slavery, but it was now at close quarters. Florida had submitted her Constitution to Congress in 1839, but because of internal dissensions in the Territory she was not admitted to Statehood. Texas, with a territory out of which might be carved "four or five states," had just come under national jurisdiction. Members were fearful for the equipoise of the numbers in the Senate and the committee was thus led to recommend for consideration in the House that "aged, waiting, slave-holding Florida" should be "yoked" in one bill with "young, energetic, free Iowa."

The Committee on the Territories accepted the constitutions submitted and reported a bill for the simultaneous admission of the two States. The conflict was precipitated at once by the introduction of an amendment[41] which provided that Iowa should have the following boundary in place of that given by the convention and believed to be the most natural:[42] "Beginning in the middle of the St. Peter's

middle of the main channel of the Mississippi River opposite the mouth of the Des Moines River; thence up the said river Des Moines in the middle of the main channel thereof, to a point where it is intersected by the old Indian boundary line, or line run by John C. Sullivan in the year 1816; thence westwardly along said line to the "old northwest corner of Missouri"; thence due west to the middle of the main channel of the Missouri River; thence up in the middle of the main channel of the river last mentioned to the mouth of the Sioux or Calumet River; thence in a direct line to the middle of the main channel of the St. Peter's River, where the Watonwan River (according to Nicollet's map) enters the same; thence down the middle of the main channel of said river to the middle of the main channel of the Mississippi River; thence down the middle of the main channel of said river to the place of beginning.

[41] Congressional Globe, Vol. 14, p. 269. This amendment, offered by an Ohio Representative, was an amendment to an amendment "defining the boundaries of Iowa and Missouri."

[42] Capitol City Reporter, Nov. 9, 1844.

River, at the junction of the Watonwan or Blue Earth River; with the said river St. Peter's running thence due east to the boundary line of the Territory of Wisconsin in the middle of the Mississippi River; thence down the middle of the last-named river with the boundary line of the Territory of Wisconsin and State of Illinois to the northeast corner of the State of Missouri in said river Mississippi; thence westwardly with the boundary line of said State of Missouri to a point due south from the place of beginning; thence due north to the place of beginning in said St. Peter's River." [45]

The question did not call out a lengthy debate either in the House or in the Senate. It was heated and of great interest in the light of later and even present conditions. Most significant was the speech of Mr. Vinton [46] of Ohio, in that he demonstrated in an able manner the real position which the West was to occupy in bringing about the best interests of the nation. He favored the reduced limits for the new State, which even then would have an area greater than that of Ohio by one-third.[45] He thought that policy "unwise and mistaken" which had hitherto prevailed in Congress, of forming Western States of such large proportions that the great Mississippi Valley would be deprived irrevocably of its share in legislation.

The ordinance of 1787 was characterized as an act of "flagrant injustice," in that it was framed with the distinct view of making and holding an Atlantic ascendency.[46] Instead of the twelve or more States which would have been formed out of this Northwest Territory by the act of the Virginia Legislature of October, 1783,[47] not more than five

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[45] This boundary would have given Iowa about two-thirds of its present area.

[46] Vinton had represented Ohio in the House twenty-one years before, and together with his colleague, Governor Vance, was the only Representative who had witnessed the growth of legislation for the West.

[45] Congressional Globe, Vol. 14, Appendix, p. 330.

[46] Ibid., p. 331.

[47] Based on a Congressional resolution of October 10, 1780, "That

were to be allowed. Justice, then, would require that there should be territory enough remaining west and north of Iowa to make in the future two more States; that a series of small States should be made west of the Mississippi River as an offset to the wrong policy which had prevailed relative to those east of that river. It was further urged that this ought to be the action taken, for the bill itself provided that, "When either east or west Florida shall contain a population of 35,000 inhabitants, it may be divided into two States."

He also argued, very ably, that the power of controlling the Government in all departments might be more safely intrusted to the West than in any other hands. His statement was a novel one at the time, but one whose truth has been set forth before the first half century has gone. The main points in the argument were: That the geographical position and commercial dependence of the West were such as to unite it indissolubly to the East and the South; that the harbors of these sections—New York, Philadelphia, and New Orleans—are also Western harbors; that the West would become an impartial umpire on conflicting claims; or the grain-growing States, slaveholding and non-slaveholding, occupy an intermediate position between their exclusive interests, because interested in the prosperity of both, a position between the two distinct social systems based on free and slave labor; between Massachusetts, where labor had many fields of employment and capital many modes of investment, and South Carolina, where they were devoted to one pursuit. Finally, he argues, with force and suggestiveness, that the great conservative power growing in the West would, if properly used, counteract the active centrifugal elements and in a few short years hush into submission elements of disunion. The people of that

each State which shall be so formed shall contain a suitable extent of territory, no less than one hundred nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit."

great valley will forever be conservative, he says, whoever may be otherwise, not because of their superior patriotism, virtue, and love of country, but simply because their position forces them to be so; they must be conservative in spite of themselves. "Disunion is ruin to them. They have no other alternative but to resist it whenever or wherever attempted. . . . That Massachusetts and South Carolina might, for aught I know, find a dividing line that would be mutually satisfactory to them, but, sir, they can find no such line to which the Western country can assent. . . . Lay down the map of the country before you; look, sir, at the wonderful network uniting the West with the North and the South and then let any Northern or Southern man tell me where he would begin the work of its destruction."

Congressman Belser, of Alabama, in the most notable speech in favor of the measure, sets forth the Southern views of the period. He asserted that equality of representation in the Senate and representation in the House according to population was a "part of our social compact, the offspring of amity and concession;" that the idea of balance of power "had not made as profound an impression" in the South as was believed.

His speech was chiefly concerned with the admission of Florida and the consideration especially of the first and fourth objections made to its becoming a State. These points were: (1) "That according to the last census she had not the requisite amount of population to entitle her to admission; (3) that Congress has the discretionary power to admit or not admit her as a new State, and that the constitution presented by her recognizes slavery in a country not included in the compromises of the Constitution." Most attention was given the third, for the Florida constitution contained two clauses which were deemed a "palpable infraction of the Constitution of the United States." These clauses were: (1) "The General Assembly shall have no power to pass laws for the emancipation of slaves; (2) the General Assembly shall have power to pass laws to

prevent free negroes, mulattoes, and other persons of color from emigrating to this State or from being on board of any vessel in any of the ports of Florida."

In the course of his debate he bids in a unique manner for Western influence by setting up that plea which after fifty years, contrary to his expectations, remains one of the chief of political slogans. "The Democratic party," he said, "unawed by the influence of the great, the rich, or the noble, has vindicated the rights of the people, sided with liberty against power. . . ." He said the period of jealousy between North and South had gone by and hereafter it will be with the monopolist and the agriculturist—between power and privilege. "The center of this republic," he says further, "is destined to be in that vast region which is watered by the Mississippi and its tributaries, and the organization of new political societies will accelerate the end." [48]

The bill with boundary amendment was passed by a large majority in the House and was sent to the Senate. Here the debate centered on the propriety of admitting the two States in one measure.

Rufus Choate represented the views of the Senate in his statement that "he could most cheerfully and heartily give the hand of welcome to Iowa, but he could not—he would not say constitutionally, but he would say conscientiously—give his hand to Florida." The bill passed the Senate, in the form given it by the House, March 3, 1845.

4. THE CONSTITUTION SUBMITTED TO THE PEOPLE

The people of Iowa had not voted on the Constitution prior to its submission to Congress. A period of some three weeks intervened between its acceptance in Congress and the expression by the voters of their opinion on this document.

Generally speaking, the Whigs were opposed to State-

[48] Congressional Globe, Vol. 14, p. 379.

hood. They were in the minority, held none of the offices, nor could they look forward to changed conditions in the near future. Objections were made to certain provisions of the Constitution, by the press of the territory, regardless of party lines. They objected to the selection of judges of the Supreme Court by the General Assembly; and of Secretary of State, State Treasurer, and other State officers by the people instead of being appointed by the Executive. The severe restrictions on banks and corporations were especially obnoxious and were to be fought over again in the Constitutional Conventions of 1846 and 1857. Other objections were made to the low salaries provided for, which would secure men of inferior qualifications alone;[48] and to biennial sessions of the legislature instead of a short session each year.

Democratic office-holders and politicians favored the acceptance of the Constitution even with the Congressional modifications. Some of the arguments of their Congressional delegate, given in a letter to the people of the territory and favoring adoption were:[49] "Notwithstanding the lessened territory, the new State would have an area of 44,300 square miles"; that a large part of the land of which they had been deprived, known as the "Hills of the Prairie," was barren and sterile, and that the boundary was the one which United States Geologist Nicollet had recommended. He then shows that the "true interest of the West is to have States of reasonable dimension, in order to get due representation in the Senate." Whatever may be the decision of the people with regard to the adoption of the Constitution, he concluded: "We will not be able hereafter, under any circumstances, to obtain one square mile more for our new State than is contained within the boundaries adopted by the act of Congress already passed."

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[48] The following annual salaries were agreed upon: Governor, $800; Secretary of State, $500; Treasurer, $3000; Auditor, $500; Judges of the Supreme Court, $800.

[49] Letter of A. C. Dodge, March 4, 1845. In Iowa Capitol Reporter, March 22, 1845.

This warning had little effect on the people. The reduced area added strength to the Whig opposition. A few Democrats sacrificed party on this one issue, and despite the imprecations of their former political friends, "stumped" the Territory against the Constitution. Theirs was a campaign of real education. "They thought nothing of the boundary line laid off against slave holding Missouri."[51]

They strove to impress upon the minds of their hearers that if the western boundary of the State were to be seventeen degrees and thirty minutes west from Washington, the limit given by Congress, it would mean the sacrifice of an area almost equivalent to one-third[52] the amount for which they had petitioned. Largely through their efforts the Constitution was rejected in the April election.[53]

4. RESUBMISSION OF THE CONSTITUTION TO THE PEOPLE

General dissatisfaction was prevalent among the Democratic politicians on the outcome. They asserted that the vote was in no sense the voice of the people upon the merits of the Constitution but merely a rejection of the Congressional boundaries. They were urgent, therefore, in their pleadings that the Constitution, as it had come from the first convention, should be submitted to a vote of the people

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[51] Schouler, History of the United States, IV, page 489. Mr. Schouler is in error on this point. There had been a long controversy over the Missouri boundary. This was not discussed in Congress in connection with the admission of Iowa. It was thought the question ought to go for adjudication before the Supreme Court of the United States. (Congressional Globe, Vol. XIV, Appendix, p. 217.) The bill was filed before that court in behalf of Missouri, Dec. 10, 1847. After many contests, the dispute was finally settled by a commission in 1896. So far as I am aware, the southern boundary was not referred to as an argument against the constitution.

[52] Area of thirty counties. Iowa Historical Record, July, 1896, p. 488.

[53] Votes for the constitution, 6023; against the constitution, 7019. (Iowa Capitol Reporter, Vol. IV, No. 14, May 10, 1845.) On the same day a Democratic Delegate to Congress was chosen by a large majority.

or that a new convention should be called. Through their intervention, the governor was prevailed upon to call a special session of the Legislature.[54] This action was regarded as "unprecedented," revolutionary, by the Whig party in the Territory.

In the Legislature, upon the final passage of a bill to resubmit the original Constitution, the Whigs protested against the text of the Constitution. By it, they said, the atheist is admitted to all of the privileges of a conscientious witness; the governor is given too much power through possession of the veto which virtually constitutes the executive a branch of the legislature. "It prohibits," they said: "the legislature from ever adopting a system of internal improvements, and from the creation of corporations for manufacturing purposes."[55] But the bank clause was the most objectionable. While there was the privilege to establish State banks, under certain conditions, it was believed that these very restrictions would nullify the whole. It was asserted: "No sane man will take stock in a bank where the stockholders are liable in their individual capacity, not only to the amount of stock by them owned respectively but to an unlimited extent." Besides it was thought that the adoption of the Constitution would cause the disappearance of the gold and the silver from the State through the coming in of large quantities of paper money. "A little specie will remain in the State," said one member, "but it will be an article of merchandise and can be had of those consistent advocates of hard money currency, called brokers or shavers, at the market price which ranges, at this ill-fated period, at from twelve to fifty per cent."

The Democratic members met these attacks on the provisions of the Constitution with the often repeated assertion that it was the Congressional enactment alone that

[54] Governor Chambers seemed to favor a new convention. Message, May 5, 1845, Journal House of Representatives, Iowa Territory, 1845, p. 15.

[55] Journal House of Representatives, Iowa Territory, 1845, p. 167.

caused the defeat at the polls. The Speaker of the House,[56] in one of the most notable speeches made in favor of the bill then before them, said:

"A few contended, that if the Constitution should be adopted by the people, an acceptance or ratification of the amendments would not necessarily follow . . . but a large majority contended that the questions were undoubtedly and irrevocably joined, and that there was therefore no opportunity allowed us to vote upon them separately. These conflicting opinions coming together as they did just upon the eve of the election, produced their natural result—a general and wide-spread confusion in the public mind—and, sir, it was in the midst of this confusion and because of this confusion that the Constitution went down. That it sank under the weight of these fatal, odious, and outrageous amendments (no one will pretend to doubt that such was the case) is to me, at least, a not less painful than well known fact, for I was in the field of its struggles, and I can say with confidence that I saw scores of the most devoted friends of the Constitution and of State Government march to the ballot-box and vote against the Constitution upon the simple and avowed ground that they believed that if they voted for it they would at the same time necessarily and unavoidably vote for the Congressional boundaries also."

The bill providing for re-submission was hurriedly passed.[57] Governor Chambers refused to sign it,[58] but it was promptly passed over his veto by a majority of two-thirds of the Legislative Council and House of Representatives.[59]

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[56] The Honorable James M. Morgan of Des Moines.

[57] It was believed that Congress would agree to the boundaries asked for, because (1) "of a sense of justice; (2) political considerations, the North would be anxious to have them come in as an offset to the new Senators from Florida." Quoted in the Iowa Capitol Reporter, June 7, 1845.

[58] The bill was vetoed on the ground that it should have been voted on by the people before it was submitted to Congress.

[59] Laws of the Territory of Iowa, 1845, ch. XIII, p. 31.

Evidently the modified Constitution had made a bad impression upon the voters, for in the August election they defeated the original draft.[80]

V.—The Convention and Constitution of 1846

Notwithstanding the fact that the Constitution of 1844 had been twice rejected by the people, Governor Clarke, in his message to the Assembly at the opening of the regular session in December, 1845, criticised the work of the opponents of the Constitution and declared the result to have been produced through "misrepresentation and mystification." He again pledged his hearty co-operation with any action which would bring about the "speedy incorporation" of Iowa into the Union as a State.[81] The Assembly was in accord with his opinion and passed an act, January 17, 1846, which provided for the election of delegates to a Convention for the purpose of framing a new Constitution. These delegates, thirty-two in number,[82] two-thirds of them being members of the Democratic party, were elected and met at the capitol in Iowa City on the fourth of May. After a session of only sixteen days a new Constitution was agreed upon.

This Constitution[83] was, generally speaking, a copy of the Constitution of 1844. Of greatest significance were the changed boundaries[84] and the hostility to banks of whatever nature.

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[80] Vote for the constitution, 7235; vote against, 7656. Shambaugh, Documentary Material Relating to the History of Iowa, No. 6, p. 184.

[81] Message, Dec. 3, 1845, Journal House of Representatives, 1842-45, p. 11.

[82] This small number was doubtless due to the spirit of economy.

[83] "It is strictly a party constitution, full of ultraism and illiberality, such an one as in our opinion is despotic in theory and equally so in practice. The Locofocos, while professing love for the people, have bound them hand and foot." Iowa Capitol Reporter, June 3, 1846. Quoted from Bloomington Herald.

[84] The convention agreed on 43° 30′ for the northern boundary,

I. THE BANK QUESTION

The bank clause was attacked with vigor in the Convention by the Whig members and became the special mark for the shafts of the press of that party. The first Constitution provided, as already indicated, that no bank should be established unless a majority of the electors, at a regular election, favored it. But there was a general fear, of such institutions, prevalent throughout the country. The majority in the Convention determined, while it was in their power, to rid themselves of the evil altogether. Accordingly they decreed in the ninth article of the Constitution that no corporate body should be created with the privilege of "making, issuing, or putting in circulation, any bill, check, ticket, certificate, promissory note or other paper or the paper of any bank to circulate as money," and that the General Assembly should prohibit, by law, any person, persons, or corporation from exercising the privileges of banking. No corporation might be created in the State, except for political or municipal purposes. The stockholders in these were to be subject to all liabilities provided by law and the State was to have no share in any corporation.

This provision was upheld by the Democratic party. It was maintained that the people demanded such a prohibition for they had already rejected the Constitution which did not not make this declaration; that resolutions were adopted in nearly every Democratic convention denouncing banks as the greatest of public evils and asking that they be prohibited.[85] The Whigs believed this one clause ought to be adequate cause for the defeat of the entire instrument. They maintained that by means of banking institutions trade was fostered; that there was good cause for

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but insisted on the western boundary fixed in the Constitution of 1844. The original area asked for would be reduced 6289 square miles, but Congress must increase its grant 6615 square miles. Congressional Globe, Appendix, Vol. XVI, p. 669.

[85] Iowa Capitol Reporter, Vol. V, p. 15.

their creation for they were to be found in all of the States and in all civilized nations. They asserted that the true policy was to have banks and a circulating medium under State control rather than be dependent on the other States for such a medium; that there was no attempt to prohibit the circulation of paper money and even then there were indications that the State would be flooded with the paper money of all the other States.

2. OTHER FEATURES OF THE CONSTITUTION

Objections were also made to the veto power which had been granted to the governor, "contrary to the will of the people," and to the election of district judges directly by the people. It was claimed that an elective judiciary would rob the courts of justice of their sacred character; that such a system was in vogue at that time in only one State, Mississippi, whose public credit was gone and where life and property were insecure; and that through the use of popular election political partisans would be made judges who in any case would be mere politicians and of necessity second rate men.

Another feature objected to by the Whig party was the provision that internal improvements were to be carried on by direct taxation. It was held that if these improvements were to be carried on only in this way, that they would draw on capital which might be employed to greater immediate advantage in other ways and that it would prohibit the use of foreign capital then obtainable at a reasonable interest.[66]

An interesting feature of the Constitution of 1844 was the clause on amendments and especially the distinction made in it between the methods of amendment and "revision or change." Amendments were to be made by the process of legislation and submission to the people as follows: "Any amendment or amendments to this Constitu-

[66] Iowa City Standard, July 22, 1846.

tion may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment shall be entered on their journals, with the yeas and nays thereon, and referred to the General Assembly then next to be chosen, and shall be published for three months, previous to the time of making such choice; and, if, in the General Assembly the next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the General Assembly shall prescribe, and if the people shall approve and ratify such amendment or amendments by a majority of all the qualified electors of the State voting for and against said amendment or amendments voting in their favor, such amendment or amendments shall become part of this Constitution. . . . The General Assembly shall not propose the same amendments to this Constitution oftener than once in six years." But any "revision or change" was to be made only through a Convention whose delegates were elected for that purpose.

The Convention of 1846 stipulated that no change whatever was to be made in the Constitution except through a Convention, the calling of which had been sanctioned by the people at a regular election and whose delegates were to be chosen within six months after the people had agreed to it. Such a method was regarded by the Whig opposition as a mere trick to prohibit amendments altogether and thus insure the carrying out of the obnoxious bank clause and the "principles of hard money." This plea was ably set forth by the Whigs and is said to have had much to do in bringing about the calling of a new Convention in 1857.[67]

[67] Some of the other modifications of the Constitution of 1844 by that of 1846 were as follows: 1. Any citizen of the State who should be engaged, either directly or indirectly, in a duel was to

VI.—Iowa Becomes a State

Meanwhile, the Iowa Congressional Delegate, A. C. Dodge, introduced a measure to repeal so much of the original act as related to the boundaries of Iowa.[68] The discussion of this bill was delayed until June 8. The following letter of May 10 indicates the somewhat novel position of a territorial convention and explains the language no longer conciliatory, of its Delegate: "If Congress will give us our boundary, it will insure the adoption of the Constitution; if they delay all further action on this subject until their next session, it will not interfere with its adoption. If adopted, we will organize the State, send our members and Constitution to Congress, and risk the consequences. This much I have said for others of the convention as well as myself."[69]

June 8, the bill came before Congress for discussion. It was strongly opposed by Rockwell of Massachusetts, Rathbun of New York, and Vinton of Ohio. Rockwell advocated 42° N. for the northern boundary line instead of 43° 30′ provided by the bill. Rathbun asserted that the people had not rejected the Constitution on account of the boundary provided for, but because of dislike for the prinples in the constitution itself. He set forth a principle, later of great moment in his entreaty to the House, "to remember that one of the chief ingredients in our safety was to maintain a due proportion and balance between the power of the Northern and the Southern States." To this end he objected to the forming of "large States at the North and

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be disqualified from holding any office in the State. 2. The Senate was to choose its own presiding officer instead of having a Lieutenant-Governor. 3. The Governor was to be elected for four years, and Judges of the Supreme Court for six years. 4. The Superintendent of Public Instruction was to be elected by the people, instead of being chosen by the Legislature.

[68] Act of March 3, 1845.

[69] Letter to Hon. A. C. Dodge from Enos Lowe, later governor, dated Iowa City, May 10, 1846.

small ones at the South." Especially was this of importance when Texas by her act of admission was to be allowed to form "four or five States." Vinton again made a telling speech. He set forth the real meaning of the discussion in his reference to its position before the last House. "This subject of creating States beyond the Mississippi," he said, "had been fully discussed and no question except that of Texas had excited more interest in the House." He even saw the conditions which were to be almost realized at the close of the first half century from that time when he says: "No part of these United States possesses an equal capacity for maintaining an immense population. . . . This valley will in process of time contain two-thirds of the population of the Union."[70]

Very interesting is it to note the entire change of front of the Iowa delegate, who shortly before[71] urged the people to accept the Congressional boundaries, for they "would not be granted a single additional square mile of territory." Now he acts under instructions, "accept no amendment which should cut them off from the Mississippi and the Missouri rivers." Congress, by the recommended "arbitrary and artificial lines, would cut the river Des Moines, which was the chief river of Iowa and on which the ultimate seat of government[72] must be placed, directly in two." "It was most unfortunate for us, sir," he said, in answer to the opposition, "that the bill for our admission came before this House when gentlemen from a certain section of the Union, however much they may attempt to deny the fact, were smarting, aye agonizing under the then recent annexation of Texas. In their frenzy to preserve what they regarded

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[70] Population of Iowa in May, 1843, 80,000. Journal Constitutional Convention 1844, p. 208. Population of Iowa in May, 1846, 120,000. Journal Constitutional Convention 1846, p. 108.

[71] March 4, 1845, Iowa Capitol Reporter, March 22, 1845.

[72] By the Constitution of 1857 the capital was permanently located at Des Moines, and as an offset to this removal the State University was located in Iowa City.

See Constitution, 1857, Art. X, sec. 8.

as the balance of political power between the slave and non-slave-holding States they were prepared to do almost anything to override the deliberately considered report of one of the most respectable committees of the House, and to vote in favor of State lines, of the propriety and expediency of which they knew almost nothing."[73]

During the months of June and July, the Whigs of Iowa kept up an active campaign against the Constitution. But it was of no avail, for the Constitution was adopted August 3, 1846, by a majority of 456 votes.[74]

August 4, President Polk signed the bill which provided for the boundaries already voted by the people. December 28, 1846, the Commonwealth of Iowa was "declared to be one of the United States of America."

VII.—The Calling of the Constitutional Convention of 1857

The Constitution of 1846 was not satisfactory and was opposed from the outset. The clause relative to the establishment of banks was especially obnoxious. As already noted, it provided that "No corporate body shall hereafter be created, renewed, or extended with the privilege of making, issuing, or putting in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money. The General Assembly of this State shall prohibit by law, any person or persons, association, company or corporation from exercising the privileges of banking or creating paper to circulate as money." It was hoped, by such a measure, that the people of Iowa would be free from the abuses of the banking systems then generally prevalent throughout the Union. The

[73] Congressional Globe, Appendix, Vol. XVI, p. 669.

[74] Iowa City Standard, Sept. 16, 1846. Shambaugh, Documentary Material Relating to the History of Iowa, No. 7, p. 213. Number of votes for the Constitution, 9492; number of votes against the Constitution, 9036.

legislature attempted to enforce this clause by a stringent act to the effect, that, "Any attempt to issue and circulate bank paper or paper to be used as money," should be made a penal offense with a fine of $1000 and imprisonment of one year in the county jail.

In spite of such legislation every expedient was resorted to in order to evade the law and create paper money. Iowa was surrounded by States which allowed the issue of paper currency, and her private bankers soon learned how to supply the State with this currency. Much of it was of the cheapest sort and brought on the evils wont to accompany such a circulating medium. A member of the Convention of 1857 exclaimed: "Notwithstanding we are prohibited in Iowa from issuing paper money, we have just as much bank paper here as any State of the Union where banking is allowed, and we are cursed with as worthless shinplasters as any State in this Union. If we had a sound, safe, and reliable circulating medium of our own under our own control, we would be able to protect the people from the vast amount of worthless trash now brought here for the purpose of circulation among us." [78]

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[78] Iowa Constitutional Debates, 1857, Vol. I, p. 351.

"This money, mostly the issues of the State stock banks of Illinois and other western States, we used in our ordinary business at all rates of discount, as quoted in the bank note detectors of the time, but it could not be used for paying taxes or buying eastern exchange, or entering public land."

Lathrop, "Some Iowa Bank History," Iowa Historical Record, April, 1897, p. 58.

One of the worst offenders was the Territory of Nebraska, which had been organized in 1855. There were no restrictions upon the power of the Legislature to charter all the banks which might be called for. The first company incorporated by the Nebraska Legislature was an Insurance Company. It was organized March 16, 1855, under the name of the Western Fire and Marine Insurance and Exchange Company. By a stretch of the powers of this corporation, which was given the right to deal in all sorts of exchange, and was also enabled to do a general banking business. "Thus the wild-cat got itself surreptitiously into existence as the Western Exchange Bank of Warren."

Nebraska State Historical Society Collections, II.

Besides, extortionate rates of interest were charged, varying from a minimum of 15 per cent to 25 per cent and as high as 50 per cent on real estate security.[76]

The press, which had opposed this clause early, began to call for a convention which should so amend the Constitution as to allow banks to be created and thus rid themselves of "shavers, usurers, and extortioners."[77]

Finally, the minds of the people were so aroused against the Constitution of 1846, and chiefly against the anti-bank clause, that the General Assembly passed an act, January 24, 1855, which provided for ascertaining the will of the people on the calling of a convention to "revise or amend the Constitution." The result of such a vote in the regular August election of the following year showed that there was a large majority in favor of a convention.[78]

VIII.—The Constitutional Convention of 1857

The convention met at Iowa City, January 19, 1857, and was in session until March 5. It was composed of thirty-six members, twenty-one of them being Republicans and fifteen Democrats.[79]

I. THE BANK PROBLEM

It was acknowledged by the members of both political parties that some system of banking was to be allowed

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This was the one institution, among many others in Nebraska, which furnished large quantities of its bills for circulation in Iowa. This bank went down in the general collapse of 1857. When its affairs were closed out, it possessed $191.30 in specie and $121 in bank notes of banks which were considered good.

[76] Iowa Standard I, No. 31, New Series, Jan. 20, 1847; Dubuque Daily Times, July 24, 1857; Constitutional Debates, 1857, Vol. I, p. 348.

[77] Iowa Standard, Jan. 20, 1847.

[78] For a convention, 32,790 votes; against a convention, 14,160 votes. Shambaugh, Documentary Material Relating to the History of Iowa, No. 8, p. 221.

[79] Dubuque Daily Republican, July 25, 1857.

under the Constitution which they were about to frame."[80] No other question was discussed at such length and the debates indicate a careful study of the systems then in vogue in the other States. Granted that they were to have banks, many questions then arose as to the kind which were to be established. Were they to have a State bank with branches, the system then favored in the other States? Was there to be the opportunity for the State Legislature to establish a general system of banking under proper restrictions or was the way to be left open for the establishment of both kinds.

Those favoring the State bank with branches, under legislative supervision, believed it would be the best system, for then there would be good reason for the parent bank to keep careful supervision of the branches. Each part of the system would thus be responsible for every other part. They also believed that with such a system the trust funds of the State might be safely deposited with them which could not safely be done under a general banking system. It was further asserted that another advantage which this plan might have would be that the bills issued for circulation would pass at par in other States which could not obtain where local banks were set up under a general banking law. The stock argument offered in favor of a free banking system was that it was more democratic. Why might not any one who could provide the requisite security become a banker just as easily as he might enter any other business? A State bank with branches, it was asserted, is nothing more or less than a monopoly. Whatever the differences might be as to the method of establishing banks there was little dissent from the view that no State bank should be established unless it were on an actual specie basis; that the bill-holders should have the greatest possible protection; and that individual stockholders should be held for all liabilities.

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[80] Four of the thirty-six members were anti-bank men.

In the main, the clause as finally agreed upon seems to resemble, most nearly, the provision in the New York Constitution of 1846.[81] It was provided that no act of the General Assembly authorizing a corporation or association with banking powers should be in force until it had first been determined that the people were in favor of it as shown by a majority vote at a special or general election. No State bank might be established unless it were founded on an actual specie basis and each of the branches should be held responsible for the "notes, bills, and other issues" of the other banks. It is further provided that "if a general banking law shall be enacted, it should provide for the registry and countersigning, by an officer of State, of all bills or paper credit designed to circulate as money, and require security to the full amount thereof, to be deposited with the State Treasurer, in United States stocks, or in interest-paying stocks of States in good credit and standing, to be rated at ten per cent below their average value in the city of New York, for the thirty days next preceding their deposit; and in case of a depreciation of any portion of such stocks, to the amount of ten per cent on the dollar, the bank or banks owning said stocks shall be required to make up said deficiency by depositing additional stocks; and said law shall also provide for the recording of the names of all stockholders in such corporations, the amount of stock held by each, the time of transfer and to whom."[82] Every stockholder is to be held responsible to the bank creditors over and above the amount of stock held, "to an amount equal to his or her respective shares, so held, for all of its liabilities accruing while he or she remains such stockholder." In case any banking association becomes

[81] "Iowa, in the same year, went further than New York in seeking to secure a safe system of banking. If a State bank was established by the Legislature, it should be founded 'on an actual specie basis,' etc." Thorpe, Constitutional History of the American People, 1776-1850, II, pp. 433, 434. Evidently the Constitution of 1857 was in the mind of the author.

[82] Constitution of 1857, Art. VIII, sec. 8.

insolvent, the bill holders are to constitute the preferred creditors. No suspension of specie payments by banking institutions is ever to be allowed and any change in the laws for creating or organizing corporations or for the granting of special privileges may be made only when agreed to by two-thirds of both branches of the Legislature.[83]

2. THE RIGHTS OF THE NEGROES

The question as to the relative position which the negroes were to occupy in Iowa was not of less interest in the discussions of the Convention than those on the banks. One member exclaimed: "From the commencement of the sessions of this Convention, this nigger question has been lugged in here in fifty different propositions and in fifty different ways. The nigger question seems to be a great theme with the majority of this Convention."[84] It is somewhat surprising that there should have been so much attention paid to it when there were at that time only some three hundred negroes and mulattoes in the State.[85]

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[83] The Seventh General Assembly passed two bills which provided for banks. One was entitled "An act authorizing general banking in the State of Iowa," and another, "An act to incorporate the State Bank of Iowa." The second was carried with a larger majority of votes. In the Senate the vote stood twenty-eight to four, and in the House, forty-two to eighteen. Both measures were adopted by the people. No banks were ever formed, however, under the General Banking Law. In September, 1858, the "State Bank of Iowa" and the "Branches of the State Bank of Iowa" were organized.

No banking business proper was done by the State Bank. This was to be left to the branches after "at least five should be organized."

At the outbreak of the Civil War there was no money in the State Treasury, and the branches of the State Bank came to the assistance of the State by loaning it the money necessary to raise and equip the troops. Because of the heavy taxation on the issues of the State banks, the State Bank of Iowa closed up its business in 1865 and the branches reorganized as National Banks.

Lathrop, "Some Iowa Bank History."

Iowa Historical Record, April, 1897, pp. 61-64.

[84] Iowa Constitutional Debates, Vol. II, p. 826.

[85] Iowa Constitutional Debates, Vol. II, p. 834.

The report of the Committee on Education forced the first discussion. This report recommended that a school should be kept in each district at least three months in each year.[86] In the substitute offered, it was provided that there should be a school in each district for six months and that such schools were to be free of charge and open to all. It was felt that injustice had been done the negroes through a legislative provision which excluded them from the schools and school privileges altogether.[87] The sentiment finally prevailed that natural rights would be best protected if all children were to be granted the privilege of securing an education. A final substitute stated that the education of "all the youths" of the State was to be provided for in the common schools of the State.[88]

Many States, and especially Illinois and Indiana, had precluded negroes from holding property.[89] Some of the delegates in the Convention advocated that "other persons not being citizens," should be included in the clause which guaranteed to foreigners all the rights of native-born citizens in the possession, enjoyment and descent of property. This amendment was lost,[90] for it was believed that such a guarantee would be an inducement for large numbers of negroes to enter the State. There was also the belief that since there had been no such law passed, such a check on legislation in the body of the Constitution was unnecessary.

Of greater interest still was the discussion which arose over the right of negroes to give testimony in the courts. It seems that the successive Legislatures had, prior to that of 1856-57, declared that "no negro, mulatto, or Indian, or black person, should be a witness in any court or in any case against a white person."[91] This law had been repealed

[86] Iowa Constitutional Debates, Vol. II, p. 825.
[87] Iowa Constitutional Debates, Vol. II, p. 835.
[88] Substitute passed by a vote of 22 in favor and 10 opposed. Iowa Constitutional Debates, Vol. II, p. 837.
[89] Iowa Constitutional Debates, Vol. I, p. 132.
[90] Iowa Constitutional Debates, Vol. I, p. 138.
[91] Iowa Historical Record, July, 1896, p. 490.

by the Legislature then recently adjourned."[82] Issue was at once taken by the Democratic party in their State Convention, in which the repeal was denounced. The Republican Convention supported the action of the Legislature with equally great ardor. This act, it was stated by the opposition, would induce large numbers of negroes to enter the State;[83] that slaves would be compelled, by their masters, to commit perjury; and that the negro under the best of conditions did not possess that natural integrity to be found among white men. The decision was finally made in the Constitutional Convention, an advanced position at the time, that "any party to a judicial proceeding shall have the right to use as witness, or take testimony of any other person not disqualified on account of interest, who may be cognizant of any fact material to the case."[84]

Was the militia to be composed only of "all able-bodied white male citizens between the ages of eighteen and forty-five? If the negroes were to be accorded privileges such as the Convention was inclined to grant them, then, it was thought by some of the delegates, they should be called upon also to defend their country."[85] It was claimed that negroes had already acquired a good reputation for such services. One member declared that there were, in his opinion, "some colored people who might be spared even to put into the first ranks in case of an invasion."

By far the most notable discussion took place over the resolution that "at the same election in which the Constitution should be submitted to the people the proposition to amend the same by striking out 'white' whenever it occurs

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[82] Iowa Constitutional Debates, Vol. I, p. 172.

[83] Iowa Constitutional Debates, Vol. I, p. 177. This assertion was made many times regardless of the fact which was set forth, that Connecticut, the only New England State which then had a constitutional provision recognizing a distinction in classes, had a greater number of negroes in proportion to her population than "all other New England States together."

[84] Constitution of Iowa, Art. I, sec. 4.

[85] This motion was lost.

in the Constitution should be separately submitted to the electors of the State for adoption or rejection."[96] The whole question of slavery was put on trial and party lines were closely drawn. Some noteworthy speeches were made setting forth the views then becoming prevalent throughout the North. Said one member:[97] "Slavery is a foul political curse upon the institutions of our country; it is a curse upon the soil of the country, and worse than that, it is a curse upon the poor, free, laboring white man. I have known many cases of honest, hard-working, plodding white men, who have come to my native city for the purpose of making a support for themselves and families, and they have been driven away in consequence of the degradation attached to labor as a result of this system of slavery. That is the reason that Virginia is becoming depopulated, until she has now become merely the slave-breeding State of this Union.

"I do not know whether it would be an advantage or not to the negro to confer upon him the right of suffrage. I have hoped, and I hope yet, the day will come when the fetters shall be stricken from all this unfortunate race. Aye, and the day will come, as sure as there is a just God in Heaven. . . . I have spoken here of apologists of slavery. Gentlemen say, who are those who stand up here and defend slavery? Is there any one here who advocates slavery? I tell you, gentlemen, that if they do not advocate slavery with their lips, in so many and direct terms, they exert an influence and power in regard to it that is the very backbone of the institution in the South. What! Is the Democratic party in favor of slavery? Let me tell them that during the last Presidential canvass, there were scattered broadcast throughout the whole length and breadth of this State speeches delivered by Stephens, Toombs and others, of the

[96] New York had granted negroes the privilege of voting, provided they were possessed of property to the amount of two hundred and fifty dollars.

[97] Constitutional Debates, Vol. II, p. 682.

Southern wing of the Democratic party. In my own town more than one hundred of these speeches came there in one package. Who received and circulated these speeches of Stephens and of Toombs, the Ajax in Congress of the Southern and pro-slavery wing of the Democracy? The Northern Democracy received and circulated them. What did those speeches contain? They contained the declaration that slavery was a divine institution; that it came from God; that it was right for one portion of the human race to hold another portion in bondage; that slavery was a beneficent institution; that it was a great blessing and should be extended all over the land, so that wherever the flag of our country should wave, there the white man should be protected in his property in his fellow-man."

This was replied to as follows:[99] "This is the position which the Democratic party stand upon. They say: We have made a contract with the South. That contract has been sealed with the best blood of the revolution, and was again most solemnly declared in the Constitution of the country, that upon this great question there should be no politics betwixt us. Let it alone. Touch it not. That is the language of Democrats, both North and South. This question shall be buried deep in oblivion. The institution shall be local, and depend upon the people acting as a people in their several capacities wherever they may be associated as a people, whether in a State or Territory. . . . The Democracy of the North and the Democracy of the South unite upon that principle. It is the principle which will hold our Constitution together. It is the principle which will prevent this Union from being severed; and it is the only one. . . . Hence we continue our old relations with these people. We stand as we did four years ago. We stand as we did eight years ago. We stand as we did twelve years ago. And we can have a victory in the South as well as in the North, because it is a victory without this agi-

[99] Constitutional Debates, Vol. II, pp. 688, 689.

tating question of slavery in it. We can fraternize with the people then as we have ever done. This is the reason why we are called by these flippant speakers, the slaveocracy of the country. It is because we discard this agitating question. It is because we turn it over to the people to whom it belongs; because we wish to take from the people of this State the power of governing the people out of the State. This makes us odious to these modern Republicans." [99]

A few members favored the exclusion of negroes from the State altogether and recommended that the article then found in the Constitution of Indiana, which prohibited negroes from entering the State be adopted.[100]

3. OTHER PROVISIONS OF THE CONSTITUTION

Among the other significant provisions made in the Constitution are: The security of the School and the University funds; the location of the capital at Des Moines and the State University at Iowa City; and the method of passing bills by the State Legislature. The school funds of the State had been much reduced because of mismanagement, and it was thought best to provide against any future permanent loss to these important funds by making adequate constitutional provision against it. This condition was met by the following clause: [101] "All losses to the permanent

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[99] The proposition to strike out the word "white" from the Constitution failed in the August election by a vote of 40,000. Daily North West, Sept. 18, 1857.

[100] Iowa Constitutional Debates, Vol. II, p. 913. The question was lost by a vote of 25 to 8.

[101] Constitution, Art. VII, sec. 3. Other changes made were: The period in which the census was to be taken was changed from two years to ten years (Art. III, sec. 33). The Governor's term of office was fixed at two years (Art. IV, sec. 2). A Lieutenant-Governor was also to be chosen. He is to be ex-officio president of the Senate and to succeed the Governor in case of his death, resignation or inability to serve (Art. IV, secs. 3, 17, 18). The Judges of the Supreme Court are to be elected by the people (Art. V, sec. 3). An Attorney-General and District Attorney is pro-

school or University fund of this State, which shall have been occasioned by the defalcation, mismanagement, or fraud of the agents or officers controlling and managing the same, shall be audited by the proper authorities of the State. The amount so audited shall be a permanent funded debt against the State, in favor of the respective fund, sustaining the loss, upon which not less than six per cent annual interest shall be paid. The amount of liability so created shall not be counted as a part of the indebtedness authorized by the second section of this article."

In Iowa, as in most of the new States, local feeling was aroused through the attempt to agree on permanent locations for the various State institutions. Here, as elsewhere, the connection between such institutions and the rise of land values was not lost sight of. An act had already been passed by the Legislature, providing for the removal of the capital from Iowa City to Fort Des Moines. Was this act to be made a part of the Constitution? Many accusations of bribery were made against the legislators who had sanctioned the change. The following measure, largely a compromise, was adopted: "The seat of government is hereby permanently established, as now fixed by law, at the city of Des Moines, in the county of Polk; and the State University at Iowa City, in the county of Johnson."[102]

The Constitution guards, too, against the harmful legislation which is wont to occur in the closing days of a Legislature.[103] It says: "No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the General Assembly, and the question upon the

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vided for, to be elected by the people (Art. V, secs. 12, 13). The limitation of State indebtedness is increased (Art. VII, sec. 2). A permanent school fund is insured (Art. VII, sec. 3). Amendment might be made by the legislature or a convention. The question of the convention is to be voted on by the people every ten years (Art. X). Debates of Convention, Vol. II, p. 1066 et seq.

[102] Constitution, Art. XI, sec. 8.

[103] Constitution, Art. III, sec. 17.

final passage shall be taken immediately upon its last reading, and the yeas and nays entered upon the journal."

The Democratic press and party opposed the Constitution from the outset.[104] Are the lectors willing, the question was asked, to change their organic law to benefit the moneyed interest and Black Republican party of this State, whose great object is to create a wild-cat system of banking and place the negro upon an equality with the white man. There was one change only which was conceded to be necessary. By this, the time of the general election was placed in October instead of August.[105]

IX.—Amendments of the Constitution

The Constitution of 1857 has been amended four times. The first amendments were approved by the Eleventh General Assembly, April 2, 1868, by the Twelfth General Assembly, March 31, 1868, and received the required majority vote of the people in the general election of that year.[106] These amendments, dealing wholly with the status of the negroes, were as follows:

1. Strike the word "white" from Section one of Article two thereof.[107]

2. Strike the word "white" from Section thirty-three of Article three thereof.[108]

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[104] North Iowa Times, June 26, 1857; Dubuque Daily Times, July 25, 1857. Votes cast in favor of the Constitution, 40,311; votes cast against the Constitution, 38,681. Shambaugh, Documentary Material Relating to the History of Iowa, No. 8, p. 260.

[105] Changed to Tuesday next after the first Monday in November by the amendment of Nov. 4, 1884.

[106] Shambaugh, Documentary Material Relating to the History of Iowa, No. 8, pp. 260-267; Horak, Constitutional Amendments in the Commonwealth of Iowa, pp. 30-32.

[107] This amendment gave the negro the right of suffrage. Votes in favor of the amendment, 105,384; votes against the amendment, 81,119.

[108] By this amendment the negroes were included in the State census. Votes favoring the amendment, 105,498; votes opposed to the amendment, 81,050.

3. Strike the word "white" from Section thirty-four of Article three thereof.

4. Strike the word "white" from Section thirty-five of Article three thereof.[109]

5. Strike the word "white" from Section one of Article six thereof.[110]

But the negro was still precluded from being elected to the State Legislature. This political inequality between the two races was erased through an amendment to the Constitution finally adopted November 2, 1880.[111]

March 17, 1880, the celebrated prohibitory amendment was passed by the Eighteenth General Assembly. This proposed to add to Article one, Section twenty-six as follows: "No person shall manufacture for sale, or sell or keep for sale as a beverage, any intoxicating liquors whatever, including ale, wine and beer. The General Assembly shall by law prescribe regulations for the enforcement of the prohibition herein contained and shall thereby provide suitable penalties for the violation hereof."[112] The act was approved by the Nineteenth General Assembly, March 13, 1882, and was submitted to the people at a special election, June 27, 1882.[113] A large majority of votes was recorded

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[109] By these changes the negro was included in the basis of representation for the election of Senators and Representatives to the General Assembly. Votes in favor of amendment, 3,105,524; votes opposed to amendment, 3,081,038; votes favoring amendment, 4,105,502; votes opposed to amendment, 4,080,929.

[110] This amendment included the negro in the State militia. Votes for the amendment, 105,515; votes opposed to the amendment, 81,050.

[111] By this amendment the words "free white" were struck from the third line of sec. 4, Art. III. Votes in favor, 90,237; votes opposed, 51,943. Shambaugh, Documentary Material Relating to the History of Iowa, No. 8, p. 272.

[112] Reprinted from the Acts of the Eighteenth General Assembly of the State of Iowa, p. 215. Given in Shambaugh, Documentary Material Relating to the History of Iowa, No. 8, p. 273.

[113] Shambaugh, Documentary Material Relating to the History of Iowa, No. 8, pp. 274, 275.

in its favor,[114] but it was declared invalid by the Supreme Court of the State.[115]

A joint resolution passed the Nineteenth and Twentieth Assemblies of the State and became a part of the fundamental law after receiving a majority vote of the people, November 4, 1884. These amendments provided: 1. The general election for State, district, county, and township officers shall be held on the Tuesday next after the first Monday in November.[116] At any regular session of the General Assembly, the State may be divided into the necessary judicial districts for district court purposes, or the said districts may be reorganized and the number of the districts and the judges of said courts increased or diminished; but no reorganization of the districts or diminution of the judges shall have the effect of removing a judge from office.[117]

3. The Grand Jury may consist of any number of members not less than five, nor more than fifteen, as the General Assembly may by law provide, or the General Assembly may provide for holding persons to answer for any criminal offense without the intervention of a Grand Jury.[118]

4. That Section 13 of Article V of the Constitution be stricken therefrom, and the following adopted as such section. Section 13. The qualified electors of each county shall, at the general election in the year 1886, and every two years thereafter, elect a county attorney, who shall be a resident of the county for which he is elected, and shall

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[114] Votes in favor of the amendment, 155,436; votes opposed, 125,677; scattered votes, 36. Shambaugh, Documentary Material Relating to the History of Iowa, No. 8, p. 276.

[115] Horak, Constitutional Amendments in the Commonwealth of Iowa, p. 32. In the test case of Koehler vs. Lange, 60 Iowa Reports, p. 543. The decision was based on the argument that in its transmission from the Eighteenth to the Nineteenth General Assembly, there had been a change in the meaning and effect of the amendment.

[116] Votes cast in favor of, 89,342; votes cast against, 14,940.

[117] Votes in favor of, 64,960; votes against, 33,868.

[118] Votes for, 72,591; votes against, 30,343.